

## 21 C.J.S. Courts § 40

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### Courts

M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc; and Lonnie E. Griffith, Jr., J.D.

### II. Jurisdiction of Courts

#### C. Jurisdiction of Subject Matter or Cause of Action

#### 3. Jurisdiction of Res or Property

§ 40. Situs of property required for in rem and quasi in rem jurisdiction

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Courts](#)  18, 19

**A state may obtain jurisdiction over a res which has a situs within the state; specific property has a situs where it is situated and intangible property has a fictional situs as may follow its documentation or, in the absence of documentation, the domicile of its owner.**

In rem or quasi in rem jurisdiction requires the presence of the res or property in the forum state<sup>1</sup> as state courts generally have unlimited power over lands situated within the state<sup>2</sup> but not as to land located outside the state.<sup>3</sup> The "local action" rule places jurisdiction in the circuit<sup>4</sup> or county in which the land is located.<sup>5</sup> In rem proceedings may be effected only in the jurisdiction where the real property is located,<sup>6</sup> and a court of one state has no power of in rem jurisdiction to directly affect title to land located wholly within the borders of another.<sup>7</sup>

For purposes of jurisdiction in rem, the maxim that personalty has its situs at the domicile of its owner is a fiction of limited utility<sup>8</sup> since when the subject matter of the litigation is specific personal property, jurisdiction may be had only where the property is situated.<sup>9</sup>

The situs of an intangible is fictional,<sup>10</sup> requiring the courts to determine the situs of the intangible under the general principles governing jurisdiction over persons and property rather than attempting to assign a fictional situs.<sup>11</sup> Nonetheless, for a determination of jurisdiction, intangible personal property is often presumed to have a location.<sup>12</sup> For purposes of determining jurisdiction over debt, the obligation to pay a debt remains with the debtor, and the situs of the debt becomes less significant because the debt may be collected wherever personal jurisdiction can be attained over the debtor.<sup>13</sup>

An intangible not embodied in a document is subject to the jurisdiction of the court where its owner is domiciled.<sup>14</sup> Electronic wire transfers of money in the form of financial credits, originating outside the forum state and sent to recipients in a foreign country, are not present in the forum state for purposes of in rem jurisdiction when neither the sender nor the intended recipient are residents of the forum state.<sup>15</sup>

Stocks, bonds, and notes are intangibles that have no physical location, but their embodiment in documents, treated for most purposes as the assets themselves, makes them partake of the nature of tangibles.<sup>16</sup> Thus, since certificates of stock are the physical representation of that stock, and the legal situs of shares is the situs of the certificates for those shares, the court's possession of the certificates gives it jurisdiction over the stock.<sup>17</sup> However, under some authority, stock certificates are only evidence of ownership and the situs of the stock is the domicile of the issuer.<sup>18</sup>

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## Footnotes

- 1 §§ 37, 38.
- 2 Tex.—*Haga v. Thomas*, 409 S.W.3d 731 (Tex. App. Houston 1st Dist. 2013), review denied, (Mar. 21, 2014).
- 3 U.S.—*Crawford v. Silette*, 608 F.3d 275 (5th Cir. 2010); *In re Great Gulfcan Energy Texas, Inc.*, 488 B.R. 898 (Bankr. S.D. Tex. 2013) (applying Texas law).  
  
Ark.—*Pulaski Choice, L.L.C. v. 2735 Villa Creek, L.P.*, 2010 Ark. App. 450, 376 S.W.3d 500 (2010).  
  
Ky.—*Fehr v. Fehr*, 284 S.W.3d 149 (Ky. Ct. App. 2008).

Tex.—Trutec Oil And Gas, Inc. v. Western Atlas Intern., Inc., 194 S.W.3d 580 (Tex. App. Houston 14th Dist. 2006).

Utah—Aequitas Enterprises, LLC v. Interstate Inv. Group, LLC, 2011 UT 82, 267 P.3d 923 (Utah 2011).

4 Fla.—Hammond v. DSY Developers, LLC, 951 So. 2d 985 (Fla. 3d DCA 2007).

5 Fla.—Frym v. Flagship Community Bank, 96 So. 3d 452 (Fla. 2d DCA 2012).

Tex.—Jansen v. Fitzpatrick, 14 S.W.3d 426 (Tex. App. Houston 14th Dist. 2000).

6 Ga.—Gansereit v. Gansereit, 218 Ga. App. 762, 463 S.E.2d 65 (1995).

7 Tex.—In re Elamex, S.A. de C.V., 367 S.W.3d 891 (Tex. App. El Paso 2012).

Wyo.—Meima v. Broemmel, 2005 WY 87, 117 P.3d 429 (Wyo. 2005).

8 U.S.—Hanson v. Denckla, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958).

9 Fla.—Escudero v. Hasbun, 689 So. 2d 1144 (Fla. 3d DCA 1997) (bank deposits).

Ill.—Golden Rule Ins. Co. v. Widoff, 291 Ill. App. 3d 112, 225 Ill. Dec. 373, 683 N.E.2d 541 (2d Dist. 1997) (money).

N.J.—Dickstein v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 295 N.J. Super. 550, 685 A.2d 943, 31 U.C.C. Rep. Serv. 2d 208 (App. Div. 1996) (investment account).

N.C.—Cole v. Hughes, 114 N.C. App. 424, 442 S.E.2d 86 (1994) (lottery ticket).

N.Y.—Cargill Financial Services Intern., Inc. v. Bank Finance and Credit Ltd., 70 A.D.3d 456, 896 N.Y.S.2d 317 (1st Dep't 2010) (bank accounts).

Or.—Rescue Technology, Inc. v. Claw, Inc., 153 Or. App. 190, 956 P.2d 1010 (1998) (invention).

**Automobiles located in forum**

N.C.—Credit Union Auto Buying Service, Inc. v. Burkshire Properties Group Corp., 776 S.E.2d 737 (N.C. Ct. App. 2015).

10 U.S.—Standard Oil Co. v. State of N.J., by Parsons, 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951).

Ariz.—State v. Western Union Financial Services, Inc., 220 Ariz. 567, 208 P.3d 218 (2009).

11 Ariz.—State v. Western Union Financial Services, Inc., 220 Ariz. 567, 208 P.3d 218 (2009).

12 Ill.—Kaiser-Ducett Corp. v. Chicago-Joliet Livestock Marketing Center, Inc., 86 Ill. App. 3d 216, 41 Ill. Dec. 651, 407 N.E.2d 1149 (3d Dist. 1980).

13 N.J.—Dickstein v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 295 N.J. Super. 550, 685 A.2d 943, 31 U.C.C. Rep. Serv. 2d 208 (App. Div. 1996).

14 Ariz.—State v. Western Union Financial Services, Inc., 220 Ariz. 567, 208 P.3d 218 (2009).

15 Ariz.—State v. Western Union Financial Services, Inc., 220 Ariz. 567, 208 P.3d 218 (2009).

16 U.S.—Hanson v. Denckla, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958).

17 Nev.—Bergeron v. Loeb, 100 Nev. 54, 675 P.2d 397 (1984).

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Wyo.—[National Crude, Inc. v. Ruhl](#), 600 P.2d 716 (Wyo. 1979).

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